Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DR. REUBEN NORMAN, JR.

Petitioner

v.

BELLSOUTH INTELLECTUAL PROPERTY CORPORATION,

Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF FOR THE PETITIONER

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Questions Presented

1. Did an appeals court err in not requiring a federal judge to equitably apply *sua sponte* United States Supreme Court precedent?

2. Did an appeals court err in not requiring a federal judge to exercise her legal duty to prevent the use of state law to supercede United States Supreme Court precedent?

3. Did an appeals court err in not reversing the dismissal of a federal case based upon the use of false documents and/or perjury by a plaintiff's lawyer, for the purpose of preventing the application of a United States Supreme Court precedent?

4. Did an appeals court err in not reversing the dismissal of a federal case based upon the use of false documents and/or perjury by a plaintiff's lawyer, for the purpose of hiding ongoing violations of federal law?

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Dixon, Terence, 'Summary of Cases on Federal Dilution Issues after *Moseley*', Dechert.Com, April, 2004. 11

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) that is the subject of this case is not reported. The ruling of the district court is not reported (Pet. App. B).

JURISDICTIONAL STATEMENT

The Northern District Court of Georgia dismissed this case on January 26, 2004. The 11th Circuit Court of Appeals rejected an *en banc* appeal on July 6, 2005. The petition for a writ of certiorari was filed on October 3, 2005. This Court has jurisdiction pursuant to 28 U.S.C. 1254 (1).

Petitioner seeks the reversal of Northern District Court of Georgia's January 26, 2004 decision accepting a claimed agreement between Norman and BIPCO, which violated Norman's due process rights guaranteed under the U.S. Constitution, 14th Amendment, Section 1; Norman's right to equitable application of U.S. Supreme Court precedents; allowed the state law of Georgia to supercede federal law and which allowed a 'fraud upon the court' to be occur and to be hidden. Petitioner was prevented from raising these claims in district court, but did raise them in the appeals court.

CORPORATE DISCLOSURE STATEMENT

Norman had no parent corporation

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment 14, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein the reside. No State shall make or enforce any Law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

15 U.S.C. Sec. 1125(a) False representation of goods interstate commerce

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device or any combination thereof, or any false designation of origin, false or misleading description of fact or false or misleading representation of fact, which-

(a) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or...

15 U.S.C. Sec. 1125(c) dilution forbidden, Federal Trademark Dilution Act (FTDA)

(1) The owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or

trade name, if such begins after the mark has become famous and causes dilution of the distinctive quality of the mark…

18 U.S.C. Sec. 371Conspiracy

The three elements of a conspiracy offense under *18 U.S.C. sec. 371* are

1. That two or more persons conspired, or agreed, to commit the crimes described in the indictment;
2. that the defendants knowingly and voluntarily joined the conspiracy; and
3. that a member of the conspiracy did one of the overt acts for the purpose of advancing or helping the conspiracy.

18 U.S.C. Sec. 1961 Racketeer Influenced and Corrupt Organizations (RICO)

Although generally applied to organized criminal activities such as loan sharking, illegal substance distribution, violent crime in racketeering and gambling, this law is sufficiently broad to include illegal activities relating to any enterprise in interstate commerce or foreign commerce. However, acts of wire fraud or mail fraud do not constitute RICO level activity, unless other crimes are involved.

18 U.S.C. Sec. 2252(b) Truth in Domain Names Act of 2003 (TIDNA)

(a) Whoever knowingly uses a misleading domain name with the intent to deceive a person into viewing obscenity on the Internet shall be fined under this title or imprisoned not more than 2 years or both.

(b) Whoever knowingly uses a misleading domain name with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 4 years or both.

18 U.S.C. Sec. 2314 Transportation of Stolen Goods

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate or foreign commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value of $5000 or more;

Shall be fined under this title or imprisoned not more than ten years or both.

STATEMENT OF THE CASE

In November 2001, BellSouth Intellectual Property Corporation (BIPCO) sent Dr. Reuben Norman a letter demanding that he give BIPCO the domain name of 'bellessouth.com'. The letter claimed various forms of trademark infringement, as well as trademark dilution based in the Federal Trademark Dilution Act of 1995 (FTDA), but mentioned no proof of either form of damage. In August 2002, BIPCO filed a complaint against Norman, along with a series of exhibits, of which Exhibit M mentioned the provider for Norman's free email site, Everyone.Net. BIPCO's original legal actions seemed to rely upon the 'likelihood' of dilution standard. BIPCO tried a series of legal maneuvers, often threatening a long court trial and other forms of legal coercion.

In April and May 2003 BIPCO refused to accept the unanimous U.S. Supreme Court March 4, 2003 *Moseley v. V Secret Catalogue, Inc.* decision, regarding the necessity of actual proof in FTDA claims. Since BIPCO had presented no proof of damages, the dilution claims were basically moot after *Moseley*. One of three things should have then occurred:

1. BIPCO could have removed the dilution claims from the complaint and continued with other claims.